



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL DRI FFT MNDCT MNRT OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants disputing a rent increase and seeking an order cancelling a notice to end the tenancy for landlord's use of property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for the cost of emergency repairs; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing and also represented the other tenant. The landlord also attended accompanied by his daughter to translate and Legal Counsel.

The parties each gave affirmed testimony, and the landlord's daughter was affirmed to well and truly translate the proceedings from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of her skill and ability. The parties were also given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the parties agreed that rent is \$800.00 per month and the tenants' application respecting an increase contrary to the *Residential Tenancy Act* is settled.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and specifically for the cost of improvements to the rental unit?
- Have the tenants established a monetary claim as against the landlord for the cost of emergency repairs?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement respecting the amount of rent payable and honouring the verbal tenancy agreement?

Background and Evidence

The landlord testified that he purchased the rental property on March 27, 2018 and the tenants were already living in one of the homes, and still reside there. There is no written tenancy agreement, and the landlord did not receive a security deposit or pet damage deposit. Rent in the amount of \$800.00 per month is payable during the first week of each month, and the tenants have not paid the landlord any rent at all.

The landlord asked for rent during the first week of April, but didn't receive any money from the tenants so on May 9, 2018 he gave the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants in return gave the landlord some bills for repairs that the tenants had completed but no rent.

The landlord testified that on March 28, 2018 he personally served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, however a copy has not been provided as evidence for this hearing by either party. The landlord testified that it is dated March 28, 2018 and contains an effective date of vacancy of June 1, 2018. He served 2 pages, and the second page has the name of a witness, his signature and a date.

The Notice was given the day after the landlord purchased the property and testified that his daughter will be residing in the rental unit. There are 3 homes on the property. One is occupied by the landlord and his family. The trailer on the property is currently

vacant and will be occupied by the landlord's parents commencing this Saturday who currently reside out of the Country.

The landlord has also provided an Affidavit sworn on May 28, 2018 wherein he deposes that he owns a 90% interest in the property and his daughter, who will be moving into the rental unit owns a 10% interest. The Affidavit also states that he resides in one home and his daughter intends to reside in the rental unit.

The tenant testified that the tenancy began in May, 2014 and the tenants paid a security deposit to the previous landlord in the amount of \$400.00.

For the first 2 months it was totally uninhabitable, and the tenants lived in a tent while doing work to the barn to make it suitable to live in. The previous owner said that the tenants could live there indefinitely, and the tenants put thousands of dollars into it. It was vacant for 4 years prior and the whole property was in disarray. The tenants installed a bathroom, a kitchen and a loft with a bedroom. They insulated it and turned it into a home.

The tenant denies being served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities at all.

There are 3 homes on the property, all of which were rented when the property was purchased by the current landlord, who gave notices to end the tenancies to all 3 dwellings. The other 2 tenants moved out. The tenant spoke to them, and they confirmed that they were given Two Month Notices to End Tenancy for Landlord's Use of Property for the landlord to live in those dwellings. The landlord moved into the big house, and now the tenants hear the landlord is bringing in family from out of the Country, but there's no indication how long they're expected to live there.

The community is an orchard community and picking season is just starting. There are no rentals available anywhere at all.

The landlord gave the Notice the day after he purchased the property and didn't want any rent and refused to sign a tenancy agreement despite the tenants offering. He said he didn't want rent and didn't want tenants, and the tenants have to move.

The tenants are seeking a monetary order for all of the work done to the dwelling in the amount of \$11,022.25. The tenants have not asked the previous landlord to reimburse them, but became concerned when the property changed hands and the tenants received the Notice to end the tenancy. The tenants would not have asked for any

money if the Notice wasn't issued. The claim is based on the current cost of materials, and the tenants have provided a Monetary Order Worksheet setting out the claim.

The landlord also attended the rental unit on 3 occasions and demanded \$1,000.00 rent and said he was taking away the entire yard. The tenants have paid \$800.00 per month for the entire tenancy since 2014.

Analysis

Firstly, the parties agree that rent is \$800.00 per month, and the landlord may only raise the rent in the amount specified by the *Residential Tenancy Act* and the regulations, and must give sufficient notice in the approved form.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice, and those reasons are limited.

The tenant testified that the previous landlord told the tenants they could reside in the rental unit indefinitely, however that is contrary to the law. There is nothing prohibiting a landlord or property owner from selling, and a purchaser may want to reside in a rented home. There is nothing illegal about that.

The landlord testified that his parents are coming from another Country, but has not provided any evidence or testimony as to how long they will be permitted to remain in Canada. I cannot accept that the rental unit needs to be occupied by the landlord's parents or the landlord's daughter when another home is also vacant and without any evidence that the landlord's parents will be permanent residents. The parties have a contract whether or not it's in writing, and the rental unit is the tenants' home.

Alternatively, the landlord could have requested in writing at the time of purchase that the previous owner give the notices to end the tenancy, but the landlord chose to wait until he took ownership. That begs the question: Did the landlord purchase and then decide he didn't want to be a landlord? The tenant testified that the landlord refused rent and refused to sign a tenancy agreement telling the tenants that he didn't want rent and didn't want tenants, and the tenants have to move.

Neither party has provided me with a copy of the Notice given so I cannot be satisfied that any given was in the approved form. Because there is no indication of permanent

residency of the landlord's parents, I find that the landlord cannot end a tenancy for landlord's use when another home on the property is vacant. Therefore, I am not satisfied that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in good faith, and I cancel it. The landlord(s) are at liberty to serve another Two Month Notice to End Tenancy for Landlord's Use of Property under the *Residential Tenancy Act*, but must be able to demonstrate good faith intent that the landlord or a close family member intends in good faith to occupy the rental unit continually for at least 6 months and that the landlord does not have another purpose that negates the honesty of intent, or demonstrate that he does not have ulterior motive such as his desire to not be a landlord.

The current landlord did not authorize any improvements to the rental unit, and I dismiss the tenants' monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

With respect to the tenants' claim for the cost of emergency repairs, the tenants turned a barn into a home with the consent of the previous owner. I fail to see how the current owner can be liable for any such costs, and I dismiss the claim.

I order the parties to comply with the standard terms of a tenancy agreement for a month-to-month tenancy, for rent payable in the amount of \$800.00 per month payable on the 1st day of each month until raised in accordance with the *Residential Tenancy Act* and the regulations.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlord in that amount, and I order that the tenants be permitted to reduce rent payable by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled and the tenancy continues.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenants' application for a monetary order for the cost of emergency repairs is hereby dismissed.

I order the parties to comply with the standard terms of a tenancy agreement for a month-to-month tenancy, for rent payable in the amount of \$800.00 per month payable on the 1st day of each month until raised in accordance with the *Residential Tenancy Act* and the regulations.

I hereby grant a monetary order in favour of the tenants as against the landlord in the amount of \$100.00, and I order that the tenants be permitted to reduce rent payable by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 13, 2018

Residential Tenancy Branch